

REMARKS

The Office Action dated November 17, 2005 has been received and reviewed by the applicant. Claims 1-5 are pending in the application. Claims 1-5 stand rejected. Reconsideration is respectfully requested.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Foster (US 6,643,386). The Examiner is reminded of section 2138.05 in the MPEP subheading "Diligence Required In Preparing and Filing Patent Application." In this regard, the majority of the time was diligence in preparation of the patent application. This section explains that a reasonable backlog taken up by the attorney in chronological order and carried out expeditiously is sufficient. It is pointed out that the preparation and filing of 59 and 33 patent applications respectively per attorney is reasonable believed to be an extremely large number of patent applications for one year. While such a number is not typically published for easy reference, the a credible intellectual property association, IPO, has stated in the past that approximately 15 is the industry average for in-house counsel.


In addition, it is pointed out that approximately a month lapsed between the signing of the invention disclosure and receipt by the Patent Staff. Reasonable processing time (on a daily basis) in having it approved for patent filing by R&D Management accounts for the majority of this time. There was also a backlog of Invention disclosure. Approximately 1,141 patent applications were filed by the Eastman Kodak Company in 2001 and each needed approval by an authorizing manager. This clearly is a backlog that should be judged just as attorney time is judged. It is respectfully submitted that this clearly demonstrates that the invention was not "abandoned" or the like.

For the convenience of the Examiner, all the past declarations are attached.

Should the Examiner consider that additional amendments are necessary to place the application in condition for allowance, the favor is requested of a telephone call to the undersigned counsel for the purpose of discussing such amendments.

For the reasons set forth above, it is believed that the application is in condition for allowance. Accordingly, reconsideration and favorable action are respectfully solicited.

Respectfully submitted,


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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.